called party to determine the interLATA carrier."[27] None of the services listed by CompTel falls into this exception, and the general authorization in the Act must govern.

CompTel is also wrong to suggest that the restrictions proposed for out-of-region long distance should apply to incidental interLATA services such as those associated with commercial mobile services.[28] As Bell Atlantic has explained herein, those restrictions should not be imposed on out-of-region long distance, much less expanded to other services. While the Act does provide for temporary structural separation of certain incidental interLATA services associated with data retrieval, the remaining incidental interLATA services, including commercial mobile services, are specifically excluded from any separate subsidiary requirement.[29] Moreover, because the Commission has already determined that there is no need for burdensome Title II type regulation of cellular providers,[30] it would make no sense to impose

---

27 ***Id.***, Sec. 271(j)(2).

28 Comptel Comments at 14. Vanguard Cellular Systems goes farther, and argues that Bell operating companies should not be allowed to provide long distance service to their in-region cellular customers, absent in-region relief (p. 8). Such an argument is inconsistent with the plain language of the Act which specifically allows immediate "interLATA provision by a Bell operating company or its affiliate" "of Commercial mobile services . . ." Act, § 151 (a), Part III. Secs. 271 (g) and 271 (g)(3). This clear understanding was recognized on the Senate floor and even AT&T has accepted this interpretation. ***See*** 142 Cong. Rec. S1311-03, (daily ed., Feb. 26. 1996) (quoting Sen. Breaux: "Upon enactment, the MFJ interLATA restriction on commercial mobile service affiliates of the Bell operating companies is eliminated."); AT&T 1995 Annual Report at 25 (The Act permits "immediate RBOC provision of interexchange services...provided in conjunction with commercial mobile and cellular service.").

29 Act, § 151(a), Part III, Sec. 272 (a)(2)(B)(i).

30 "Specifically, we will forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers." In addition the Commission found that "because of the presence of competition in the CMRS market, access tariffs seem unnecessary." ***Implementation of Sections 3(n) and 332 of the Communications Act***, 9 FCC Rcd 1411, 1480 (1994).

the draconian dominant carrier regulation on a subset of such providers just because they now may provide long distance service as an incidental adjunct to their basic cellular service.

Finally, a few commenters argue that alliances or combinations among Bell operating companies requires greater scrutiny for their out-of-region long distance services.[31] If any pair of regional Bell operating companies were to make a definitive agreement to provide long distance service jointly, the Commission would have the opportunity to study how such an agreement would impact implementation of the Act. Given that no such agreement currently exists,[32] there is no basis for Commission action.

Conclusion

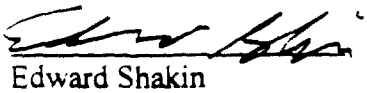
Based on the foregoing and Bell Atlantic's initial comments herein, the Commission should authorize Bell Atlantic and other Bell operating companies to be nondominant providers of out-of-region interLATA services without subjecting them to a separate subsidiary requirement.

---

31 ***See*** CompTel Comments at 12-13; Comments of the Association for Local Telecommunications Services at 5 (filed Mar. 13, 1996).

32 Affiliations relating to other services, including cellular, do not impact individual companies' lack of market power in the provision of long distance services and are therefore irrelevant to the issues before the Commission in this docket.

Respectfully submitted,



Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies
and Bell Atlantic Communications, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of	)	
	)	
Bell Operating Company	)	CC Docket 96-21
Provision of Out-of-Region	)	
Interstate, Interexchange Service	)	

Reply Affidavit of Robert W. Crandall

1. I am a Senior Fellow in Economic Studies at the Brookings Institution in Washington, DC.[1] My credentials and curriculum vitae were included in my original affidavit filed with the comments of Bell Atlantic in this matter on March 13, 1996. I have been asked by Bell Atlantic to respond to some of the concerns raised by other commenters in this proceeding.

Summary

2. A number of the commenters in this proceeding support the Commission's proposal to require that the Bell Operating Companies (BOCs) establish separate subsidiaries for their new out-of-region services. These commenters generally allege that there are two quite distinct dangers of allowing the BOCs to offer out-of-region interstate interexchange services as nondominant, integrated carriers, namely that: (I) the BOCs might use their in-region local-exchange facilities to discriminate against incoming interexchange traffic from other IX carriers

[1] These comments are solely those of the author and should not be construed to represent the views of the Brookings Institution, its other staff members, or Trustees.

and (ii) the BOCs might shift the costs of these out-of-region services to intrastate services.[2] These commenters recommend that the Commission require the BOCs to establish separate subsidiaries for their out-of-region interstate IX operations, guarantee strict separation of personnel and facilities, and provide all in-region termination services to their out-of-region interexchange subsidiaries on an arms-length basis under tariff as preconditions for being granted nondominant status in offering interstate, interexchange services.

3. In this affidavit, I discuss both of these concerns, demonstrating that they are overstated and that they are already addressed by other means that are far less damaging to competition than the requirement of separate subsidiaries. In addition, given that the AT&T divestiture is now distant history and that the Modification of Final Judgment (MFJ) that settled the AT&T case has been vacated by the Telecommunications Act of 1996, I recommend that the burden of proof be placed squarely on those who propose onerous regulatory requirements. Since BOC entry into out-of-region interstate interexchange services is clearly pro-competitive, the BOCs should be allowed to proceed without unnecessary encumbrances unless there is clear evidence of actual anticompetitive abuse.

Discrimination

4. It bears repeating that the BOCs will enter the interstate interexchange market with a

---

[2] The Comments of AT&T, Sprint, MCI, The Telecommunications Resellers Association, Excel, The Competitive Telecommunications Association, and the Public Utilities Commission of Ohio raise one or both of these issues in various forms.

zero market share. Moreover, each one will compete with the other BOCs, the existing IX carriers, and other entrants for traffic in this market. As a result, each BOC is likely to account for a very small share of the incoming IX traffic that it terminates in its own region. Providing interexchange access for this incoming traffic is increasingly subject to competition from CAPs and, soon, from other new entrants into local telecommunications markets, including AT&T and MCI. It would be irrational for any BOC to discriminate selectively against the overwhelming share of its own interstate access business in order to attempt to build its very small share of interstate IX traffic.

5. There will likely be multiple new BOC entrants into out-of-region services. Each will be sending a small share of its own traffic for in-region termination and a large share in other BOC and LEC territories. The IX carriers and the other BOCs will have an excellent opportunity and every incentive to compare the quality of such termination services across the country. The Commission will obviously be able to share in this information and act on any evidence of abuses with dispatch. With such scrutiny and ample bases for comparison, it is unlikely that any discrimination that is sufficiently severe to disadvantage the IX carriers could escape detection.

6. More important, it simply strains credulity to suggest that the BOCs will succeed in the new more competitive order established by the Telecommunications Act of 1996 by using their in-region facilities to degrade the connections of, say, MCI or AT&T, to their large, in-region customers.[3] The argument for such degradation requires the follwing strong assumptions:

---

[3]Comptel Comments at 4; AT&T Comments at 6.

i. It assumes the BOCs still have an in-region bottleneck despite the fact that states now must allow competitive entry into intrastate services and the BOCs now must open their networks for interconnection by competitors;

ii. It assumes that the BOCs can now identify the overwhelming share of calls delivered by other carriers from out-of-region locations;

iii. It assumes that the BOCs will reduce the quality of termination services for all but the comparatively small share of calls that they originate out-of-region despite the fact that the termination of interstate calls provides a substantial share of the contribution to the fixed costs of the local loop;

iv. It assumes that, after exercising this power to reduce service quality, the BOCs will then approach large in-region customers and demand that these customers switch to the BOCs own out-of-region interstate interexchange services or these customers will continue to receive low-quality in-region service;

v. It assumes that, for some reason, these large companies will acquiesce to this extortion and will not seek out alternative carriers that are already available in urban corridors or new carriers as they become available; and

vi. It assumes that all of this will occur without detection by large sophisticated access customers, such as AT&T and MCI, and without detection by the regulators.

The abuse-of-dominance argument has now been replaced with an "abuse of customers" argument that is simply not credible. Now that there is entry into local telecommunications markets by large cable companies, such as Time Warner and Cablevision, and of large IX carriers, such as AT&T and MCI, it would be folly for the BOCs to abuse their customers in this fashion. It would only accelerate their loss of local market share.

Cross Subsidies

7. There is no doubt that carriers regulated on the basis of their costs and required to offer local services at rates far below an unconstrained monopoly price could attempt to shift costs from other activities into the regulated jurisdictions in order to convince their regulators of the need for higher regulated rates. Historically, this concern was addressed by scrutinizing the costs of regulated carriers to ensure that only those costs properly attributed to a service were reflected in the rates charged to customers for those services. These cost-allocation procedures were burdensome and imprecise. As a result, the Commission has recognized that there is a much better solution to this problem. After careful consideration, the Commission moved seven years ago to impose price caps on regulated interstate carriers (AT&T) while continuing to press for rate rebalancing and the development of competition in the interstate interexchange market. The next year, price caps were tentatively extended to the LECs' interstate activities, and in 1995 the Commission adopted a pure price-caps option that is stripped of any profit-sharing component.

8. For many years, the states steadfastly resisted any such approach to regulatory reform, apparently preferring monopoly and cost-based regulation to the more efficacious combination of price caps and competitive entry. As of 1994, only six states allowed competitive entry into the full array of local switched services, and only a handful of states had implemented even a partial price-cap regime. By 1995, the threat of Congressional action and perhaps the continuing demonstration effects of Commission action had induced another 10 states to allow entry into local services, but the majority of states still resisted the shift towards less-regulated competition.[4] Obviously the Telecommunications Act of 1996 has now forced every state to open up its telecommunications markets to competition. As a result, the states are moving much more rapidly to implement price caps. Today, a majority of states either have implemented price caps or a local rate freeze, thereby ameliorating any legitimate concern over cross-subsidization. The other states still have the option of relying on cost-allocation procedures, but price-caps are clearly the superior mechanism for preventing cross-subsidies. Surely, the Commission should not hinder the development of competition in interstate markets through separate-subsidiary contrivances simply because some states are still resisting the most sensible course in this new era of open entry. Rather, the Commission should encourage states to move quickly to implement price caps and end the argument over cross subsidies.[5]

---

[4] For a discussion of these trends, see Robert W. Crandall and Leonard Waverman, Talk is Cheap: The Promise of Telecommunications Reform in North America. Brookings, 1996, Chapter 2.

[5] Some states still have profit-sharing in their price-cap regulations, thereby reducing their effectiveness in preventing cross-subsidization. The Commission has led by example and now should encourage the states to move towards "pure" price caps.

The Changed Policy Environment

9. The Telecommunications Act of 1996 has been enacted into law, and the MFJ has disappeared. There is no reason why the Commission should now develop its policies under the assumption that the BOCs will emulate the behavior of AT&T prior to 1982. The Telecommunications Act of 1996 provided for the immediate entry of the BOCs into these out-of-region markets and did not mandate structural separations for such operations. Imposition of onerous requirements on these out-of-region operations would surely slow the BOCs' entry into out-of-region interexchange services and would impose large costs on the BOCs, thereby reducing the strength of this new competition. These facts are obviously not lost on the IX companies filing comments in this proceeding.

10. None of the alleged problems in allowing the BOCs to operate as nondominant carriers in these out-of-region markets with unseparated facilities have yet surfaced. If they do, there will be ample opportunity for the Commission and, indeed, the antitrust authorities to respond. Any attempt to discriminate against other IX carriers or to cross-subsidize out-of-region services from in-region services would likely redound only slowly to the benefit of a BOC, if at all, but it would become apparent much more quickly to the BOC's customers, competitors, and regulators as well as to the antitrust authorities. However, the imposition of structural separations and the prohibition of joint ownership of in-region and out-of-region facilities would have immediate and adverse effects on potential competition.

11. Equally important is any attempt to prevent the BOCs from engaging in the joint marketing of in-region and out-of-region services, particularly to large customers. The IX carriers recognize the efficiencies available from such joint marketing, and they are therefore actively engaged in entering local telecommunications markets as facilities-based carriers or resellers. They clearly have an interest in preventing seven new competitors, now freed by Congress, from realizing similar economies. The Commission should not deny these new entrants the economies of joint marketing unless there is evidence of actual anticompetitive actions by the BOCs.

Conclusion

12. The BOCs should not be required to operate their out-of-region interexchange services from structurally separate subsidiaries, sacrificing joint operating and marketing economies, simply on the basis of speculation about potential anticompetitive conduct.

Further than this, affiant sayeth not.

Robert W. Crandall

Subscribed and sworn before me this 22d day of March, 1996.

Notary Public

My commission expires:

[illegible] 31, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 1996 a copy of the foregoing "Bell Atlantic Comments on Sections IV, V and VI" was served on the parties on the attached list.

Tracey DeVaux

Tracey DeVaux

* Via hand delivery.

Janice Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554